

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

CRYSTAL GOOD, et al.,

Plaintiffs,

v.

**WEST VIRGINIA-AMERICAN WATER
COMPANY, et al.,**

Defendants.

Case No.: 2:14-CV-01374

Hon. John T. Copenhaver, Jr.

Consolidated with:

Case No. 2:14-11011

Case No. 2:14-13164

Case No. 2:14-13454

**JOINT MOTION TO ESTABLISH QUALIFIED SETTLEMENT FUNDS,
APPOINT A QUALIFIED SETTLEMENT FUND ADMINISTRATOR, APPROVE
THE ESCROW AND QUALIFIED SETTLEMENT FUND AGREEMENT
AND APPOINT ESCROW AGENT**

Settlement Class Counsel and West Virginia-American Water Company, American Water Works Service Company, Inc., and American Water Works Company, Inc. (“American Water Defendants”) and Eastman Chemical Company (“Eastman”) (collectively, the “Parties”) hereby move for an order (i) establishing three separate qualified settlement funds pursuant to Internal Revenue Code 468B and Treasury Regulations 1.468B-1 et. seq., (ii) appointing Smith Cochran Hicks PLLC as the Qualified Settlement Fund Administrator for each of the Qualified Settlement Funds, (iii) appointing Fifth Third Bank as the Escrow Agent to establish accounts to hold the assets of the Qualified Settlement Funds and to disburse funds to disbursement accounts for the payment of eligible claims, Attorneys’ Fees and Litigation Costs and Administrative Expenses, and (iv) approving the Escrow and Qualified Settlement Fund Agreement (“Escrow Agreement”) among Fifth Third Bank, Settlement Class Counsel, Eastman, American Water Defendants and Smith Cochran Hicks as the Settlement Administrator. In support of this motion, the Parties state as follows:

1. The Parties filed the Joint Motion for Final Approval of the Proposed Class Settlement and for Final Approval of Attorneys' Fees, Costs and Incentive Awards on December 29, 2017.
2. After conclusion of the appropriate deadlines for opting out and objecting and after conducting fairness hearings, the Court entered an Order Granting Final Approval of the Good Class Settlement and Entering Judgment on June 8, 2018.
3. The Good class settlement agreement (the "Amended Class Action Settlement Agreement" or "ASA") provides that the American Water Guaranteed Settlement Fund and the American Water Contingent Settlement Fund shall be maintained as Qualified Settlement Funds within the meaning of Section 468B of the Internal Revenue Code ("Code") and the IRS regulations promulgated thereunder. While the ASA does not so require, the Parties wish to maintain the Eastman Fund as a Qualified Settlement Fund within the meaning of Section 468B of the Code and the applicable IRS regulations.
4. This Court has jurisdiction over this matter under Treas. Reg. Section 1.468B-1(c)(1), which provides in relevant part that a Qualified Settlement Fund "is established pursuant to an order of, or is approved by, the United States, any state,...or any agency or instrumentality (including a court of law) ... and is subject to the continuing jurisdiction of that governmental authority."
5. The Parties request that the Court order the establishment of the Qualified Settlement Funds as provided in the Amended Settlement Agreement and the Escrow Agreement. The Escrow Agreement is attached hereto as Exhibit A.

6. Consistent with Treas. Reg. Section 1.468B-1(c)(2) & (3), the Eastman Fund, the American Water Guaranteed Settlement Fund, and the American Water Contingent Settlement Fund each are “established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability . . . [a]rising out of a tort, breach of contract, or violation of law,” and the assets of each Fund are, pursuant to the Escrow Agreement, “segregated from other assets of the transferor[s] (and related persons).”
7. The Parties have identified Fifth Third Bank as an entity with the experience and substantive ability to perform the duties of Escrow Agent. The qualifications of Fifth Third Bank are outlined in the proposal document attached as Exhibit B. Fifth Third Bank is a subsidiary of Fifth Third Bancorp, which is a bank holding company with assets of over \$142 billion. Fifth Third Bank operates in West Virginia and has six retail branches in the counties covered by the settlement.
8. Fifth Third Bank has confirmed that class members will be able to cash their settlement checks at any of its branches and that there will be no charge for cashing checks.
9. The Settlement Administrator has the qualifications and experience necessary to perform the duties of the Qualified Settlement Fund Administrator. The Settlement Administrator will be a signatory to and bound by the terms of the Escrow Agreement.

The Parties respectfully request that the Court enter an Order, a proposed form of which is submitted to the Court:

1. Approving the terms of the Escrow and Qualified Settlement Fund Agreement;
2. Finding and holding that the Eastman Fund, the American Water Guaranteed Settlement Fund, and the American Water Contingent Settlement Fund each constitute a qualified settlement fund (“QSF”) within the meaning of section 468B of the Code and Treasury Regulation section 1.468B-1, *et seq*;
3. Retaining continuing jurisdiction and supervision over the Eastman Fund, the American Water Guaranteed Settlement Fund and the American Water Contingent Settlement Fund;
4. Appointing Fifth Third Bank to serve as Escrow Agent;
5. Appointing the Settlement Administrator to serve as the Qualified Settlement Fund Administrator of each of the Qualified Settlement Funds pursuant to the terms of the Escrow Agreement; and
6. Ordering that the Escrow Agent shall hold, invest, maintain and administer the American Water Guaranteed Fund, the American Water Contingent Fund and the Eastman Fund in accordance with the terms of the Escrow Agreement, and that the funds held by the Escrow Agent in the American Water Guaranteed Settlement Fund and the American Water Contingent Settlement Fund and the Eastman Fund shall be disbursed by the Escrow Agent only pursuant to and in conformance with the terms of the ASA and the Escrow Agreement.

DATED: July 3, 2018.

Respectfully submitted,

/s/Van Bunch

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